IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO.33 OF 2007

IN

ARBITRATION PETITION NO.259 OF 2000

Pramod Kumar Makharia ...Petitioner

v/s

Laxmikant B. Makharia and ors. ...Respondents

Mr M.P.S. Rao iwith Mr Jaideep Mitra i/b M/s Deven Dwarkadas and Partners for Petitioner.

Mr D.D. Madon i/b Mr Gabriel Pillai for Respondent Nos.1 and 2.

Mr A.K. Goel for Respondent No.3.

Mr Snehal Shah i/b M/s Narayanan and Narayanan for Respondent Nos.4 and 5.

CORAM : D.K. DESHMUKH J.

DATE : 4TH JUNE 2007.

P.C. :-

1. The case of the petitioner is that this Court has appointed Court Receiver of the premises on the second floor of the building from where the partnership firm - M/s Maks Commercial Centre was carrying on the business. According to the petitioner, while the Court Receiver was in possession of the premises, a memorandum of understanding dated 30th November 2006 was entered into between the respondent Nos.2 and 3 on one hand and respondent No.5 on the other hand for development of the property, copy of which is at Exh.'A' to the petition. In paragraph 7 of that memorandum of understanding, following recital is to be found :-

> "The owners have on execution hereof placed the Developers in vacant physical possession of the premises on the second floor of the building standing on the said property, admeasuring in the aggregate approx. 1180 sq.ft. carpet area...."

. According to the petitioner, this recital for handing over possession of the second floor to respondent No.5 by respondent Nos.2 and 3 amounts to contempt of the Court as the property was cusotodia

legis at that point of time. Affidavits have been filed on behalf of the respondent Nos.2 and 3 as also respondent No.5. The learned counsel appearing for respondent Nos.2, 3 and respondent No.5 have stated that the recital quoted above found in paragraph 7 saying that possession of second floor has been handed over to respondent No.5 is incorrect and was made by mistake. In fact, at the relevant time, second floor of the building was in possession of the Court Receiver and even today, the second floor of the building is in possession of the Court Receiver. They have further stated that till the respondent Nos.2 and 3 are placed in possession of the second floor in accordance with law they will not do anything further in relation to the second floor. The statement is accepted. In my opinion, this statement fully protects the interest of the petitioner and it also shows that the property which is custodia legis has not been dealt with improperly by the respondents. Hence the petition is disposed off.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.